# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible]

No. [illegible] 150

ANNBAR ASSOCIATES, a Co-Partnership, CONTINENTAL BUILDING & OPERATING CO., INC., a Corporation,

*Appellants,*

vs.

WEST SIDE REDEVELOPMENT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, a Municipal Corporation, and NORMAN H. ANDERSON, Attorney General, State of Missouri,

*Appellees.*

## MOTION TO DISMISS OR AFFIRM


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IN THE

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vs.

WEST SIDE REDEVELOPMENT CORPORATION, a Corporation, CITY OF KANSAS CITY, MISSOURI, a Municipal Corporation, and NORMAN H. ANDERSON, Attorney General, State of Missouri,
*Appellees.*

## MOTION TO DISMISS OR AFFIRM

Appellees, West Side Redevelopment Corporation and City of Kansas City, Missouri, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal be dismissed on the grounds that it does not present a substantial federal question and that the judgment of the Supreme Court of Missouri rests on an adequate non-federal basis, or in the alternative, that the final judgment and decree of the Supreme Court of Missouri be affirmed on the ground that the questions presented are so unsubstantial as not to need further argument.

## OPINIONS BELOW

The opinion of the Circuit Court of Jackson County, Missouri, at Kansas City, Division No. 5 (Appendix B to Appellants' Jurisdictional Statement) is not officially reported. The opinion of the Supreme Court of Missouri, *en banc*, is reported at 397 S.W.2d 635 (Appendix A to Appellants' Jurisdictional Statement).

## STATUTES INVOLVED

The statutes involved in the appeal are set forth in Appendices C, D and E to Appellants' Jurisdictional Statement.

## QUESTIONS PRESENTED

1. Do Chapter 353, R.S.Mo. (1959) and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, in the abstract and without reference to the facts involved in this appeal, permit an urban redevelopment corporation to acquire real property by the exercise of eminent domain without requiring the achievement of a public purpose or benefit?

   A. In determining whether Chapter 353, R.S.Mo. (1959), and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, permit West Side Redevelopment Corporation, an urban redevelopment corporation, to acquire certain real property by the exercise of eminent domain without requiring the achievement of a public purpose or benefit, can the actual facts involved in this case, including the provisions of Commit-

tee Substitute for Ordinance No. 29352 and the development plan approved thereby and required by said Chapter 353 and said Chapter 61, properly be considered?

B. Did the Supreme Court of Missouri properly construe the Constitution of the State of Missouri of 1945, Chapter 353, R.S.Mo. (1959), and Chapter 61, Revised Ordinances of Kansas City, Missouri, as amended, as assuring the accomplishment of the public purpose of blight clearance and as requiring a subsequent ordinance, such as Committee Substitute for Ordinance No. 29352 passed by Kansas City, Missouri (Appendix E to Appellants' Jurisdictional Statement), to express the details and specific provisions, conditions and restrictions necessary to effect the overall public purpose with respect to a particular redevelopment project?

2. Do Chapter 353, R.S.Mo. (1959), and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, violate the equal protection clause of the 14th Amendment to the Constitution of the United States by failing to provide a legislative procedure to determine, after a public purpose has been accomplished (*i.e.*, the clearance of blight and completion of the redevelopment project), whether existing restrictions may be abandoned or further restrictions are required?

3. Did the Supreme Court of Missouri properly interpret and construe Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended, and Committee Substitute for Ordinance No. 29352, in holding that such legislation does not permit an evasion of the tax relief requirements of Chapter 353, R.S.Mo. (1959), and of the Constitution of the State of Missouri of 1945?

4. Does paragraph 23 of the Second Supplemental Contract approved by, and made a part of, Committee Substitute for Ordinance No. 29352 relieve the lessee of the redevelopment project from liability to account for excess earnings to an assignee of West Side Redevelopment Corporation and, if so, does this amount to an unconstitutional evasion of the net earnings restrictions of Chapter 353, R.S. Mo., and Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956?

## JURISDICTION

The basis for jurisdiction asserted by appellants is set forth in their Jurisdictional Statement.

## STATEMENT

Appellants filed a declaratory judgment action in the Circuit Court of Jackson County, Missouri, at Kansas City, alleging the unconstitutionality of Chapter 353, R.S.Mo. (1959) ("The Urban Redevelopment Corporations Law"). Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended ("The Urban Redevelopment Ordinance") and Committee Substitute for Ordinance No. 29352 passed by the City Council of Kansas City, Missouri, on November 15, 1963, and authenticated as so passed ("Sub. Ord. 29352"). The Circuit Court of Jackson County, Missouri, at Kansas City, entered judgment against the appellants on August 24, 1964, and denied all relief sought by them. This is an appeal from a final judgment entered in this case on December 13, 1965, by the Supreme Court of Missouri, *en banc*, sustaining the action of the trial court and denying all relief sought by the appellants.

West Side Redevelopment Corporation (hereinafter called "West Side"), pursuant to The Urban Redevelop-

ment Corporations Law of the State of Missouri [Chapter 353, R.S.Mo. (1959)] and The Urban Redevelopment Ordinance (Chapter 61, Revised Ordinances of Kansas City, Missouri, 1956, as amended) (said Chapters 353 and 61 hereinafter collectively called the "Missouri Urban Redevelopment Laws"), submitted a development plan for the redevelopment of an area in downtown Kansas City, Missouri. The development plan submitted by West Side, after public hearings before the City Plan Commission and Finance Committee of the City Council of Kansas City, Missouri, was approved by the City Council of Kansas City by Sub. Ord. 29352. The Missouri Urban Redevelopment Laws, Sub. Ord. 29352, and the development plan impose certain restrictions upon West Side and require that the blight in the approved project area be cleared and the redevelopment completed in all events. Sub. Ord. 29352 granted to West Side, a corporation existing and organized pursuant to The Urban Redevelopment Corporations Law, the power to acquire certain real property in the project area by the exercise of eminent domain and granted partial tax relief to the real property in the project area. The partial tax relief continues only so long as the real property is used in accordance with conditions and restrictions set forth in the development plan approved by Sub. Ord. 29352. The specific conditions and restrictions are set forth in detail in the opinion of the Supreme Court of Missouri (Appellants' Appendix A, pp. A 5-7).

The appellants in this action are Annbar Associates, the owner of a hotel located in Kansas City, Missouri, and Continental Building & Operating Co., Inc., the lessee of a hotel located in Kansas City, Missouri. The appellants herein, the plaintiffs in the trial court, instituted this action as taxpayers in Kansas City, Missouri, and as the owner and the lessee of hotels alleged to be in competi-

tion with a hotel complex proposed to be constructed by the appellee, West Side, pursuant to the development plan approved by Sub. Ord. 29352. Irene Tomlinson, a person owning land in the redevelopment project area, intervened in this action in the trial court as a plaintiff and appealed to the Supreme Court of Missouri from the adverse decision in the trial court. Sub. Ord. 29352 authorized West Side to acquire Tomlinson's property by the exercise of eminent domain. Tomlinson has not appealed from the decision of the Supreme Court of Missouri.

The Missouri Urban Redevelopment Laws, and specifically the provisions thereof granting the power of eminent domain and the partial tax relief, were enacted by the State of Missouri and the City of Kansas City, Missouri, pursuant to specific provisions contained in the Constitution of the State of Missouri of 1945. Article VI, Section 21, of the Missouri Constitution, provides:

> "Section 21. Laws may be enacted, and any city or county operating under a constitutional charter may enact ordinances, providing for the clearance, replanning, reconstruction, redevelopment and rehabilitation of blighted, substandard or insanitary areas, and for recreational and other facilities incidental or appurtenant thereto, and for taking or permitting the taking, by eminent domain, of property for such purposes, and when so taken the fee simple title to the property shall vest in the owner, who may sell or otherwise dispose of the property subject to such restrictions as may be deemed in the public interest."

And, Article X, Section 7, of the Missouri Constitution, states as follows with respect to partial tax relief:

> "Section 7. For the purpose of encouraging forestry when lands are devoted exclusively to such purpose, and the reconstruction, redevelopment and re-

habilitation of obsolete, decadent or blighted areas, the general assembly by general law, may provide for such partial relief from taxation of the lands devoted to any such purpose, and of the improvements thereon, by such method or methods, for such period or periods of time, not exceeding twenty-five years in any instance, and upon such terms, conditions, and restrictions as it may prescribe."

The appellants do not contend that the foregoing provisions of the Missouri Constitution are contrary to the Constitution of the United States. Rather, they allege that the Missouri Urban Redevelopment Laws and Sub. Ord. 29352 violate the equal protection clauses of the Constitutions of the State of Missouri and of the United States *because a public purpose is not required to be satisfied or accomplished.* These contentions have been denied both by the trial court and by the Supreme Court of Missouri, *en banc.*

## ARGUMENT

The decision of the Supreme Court of Missouri, *en banc,* is correct and appellees' motion should be granted. The issues raised by appellants, as stated in their "Questions Presented", are a frivolous attempt to obtain further delay and to seek review by the United States Supreme Court of hypothetical questions and of the interpretations by the Supreme Court of Missouri of the Missouri Urban Redevelopment Laws and of Sub. Ord. 29352.

This Court cannot and will not render advisory opinions or decide hypothetical questions. Mr. Justice Brennan succinctly stated the rule in *United States* v. *Raines,* 362 U.S. 17, 4 L. Ed. 2d 524, 80 S. Ct. 519 (1960), in the following language (362 U.S. at 21-22):

> "* * * This Court, as is the case with all federal courts, 'has no jurisdiction to pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies. * * *' *Kindred to these rules is the rule that one to whom application of a statute is constitutional will not be heard to attack the statute on the ground that impliedly it might also be taken as applying to other persons or other situations in which its application might be unconstitutional.* (Citing 13 authorities) In Barrows v. Jackson, 346 U.S. 249, 97 L. Ed. 1586, 73 S. Ct. 1031, this Court developed various reasons for this rule. *Very significant is the incontrovertible proposition that it 'would indeed be undesirable for this Court to consider every conceivable situation which might possibly arise in the application of complex and comprehensive legislation.'* Id. 346 U.S. at 246. The delicate power of pronouncing an Act of Congress unconstitutional is not to be exercised with reference to hypothetical cases thus imagined." (Emphasis supplied).

The four "Questions Presented" by appellants actually serve to raise only one issue—whether the Missouri Urban Redevelopment Laws and Sub. Ord. 29352, in granting the right of eminent domain or partial tax relief, violate the equal protection clause of the 14th Amendment to the Constitution of the United States because they do not require that a public purpose or benefit be achieved. Appellants, on the one hand, contend that this legislation violates the equal protection clause. Yet, on the other hand, appellants readily concede that urban redevelopment and slum clearance are public uses which constitutionally justify legislation granting eminent domain and partial tax relief. It is appropriate to set out in full appellants' concession (Appellants' Jurisdictional Statement, p. 6):

"* * * At the outset it should be noted that appellants do not question the now generally accepted principle that urban redevelopment and slum clearance are public uses justifying the exercise of the power of eminent domain and the granting of tax relief. * * *"

The Appellants then concede, in the following language, that they simply seek a review of the "means" adopted by the Missouri legislative authorities to carry out the admittedly public purpose of urban redevelopment (Appellants' Argument, p. 18):

"The single fundamental issue raised in this appeal is: What *legislative restrictions* are necessary to assure that a private entity which acquires land by eminent domain *for the public purpose of urban redevelopment,* will devote such land to that public purpose. * * *" (Emphasis ours).

This Court already has held that it does not have jurisdiction to review the legislative "means" of attaining a public purpose. In *Berman* v. *Parker,* 348 U.S. 26, 99 L. Ed. 27, 75 S. Ct. 98 (1954), Mr. Justice Douglas, speaking for the Court in a decision reviewing the District of Columbia Redevelopment Act of 1945, stated (348 U.S. at 33):

"Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. See Luxton v. North River Bridge Co., 153 U.S. 525, 529, 530, 38 L. Ed. 808, 810, 14 S. Ct. 891; United States v. Gettysburg Electric R. Co., 160 U.S. 668, 679, 40 L. Ed. 576, 580, 16 S. Ct. 427. Once the object is within the authority of Congress, *the means by which it will be attained is also for Congress to determine.* * * *" (Emphasis ours).

The legislative means or restrictions are a matter of political concern, not judicial. Such legislative or political questions are not subject to review by this Court. *Rindge Co.* v. *Los Angeles County,* 262 U.S. 700, 67 L. Ed. 1186, 43 S. Ct. 689 (1923); *Joslin Mfg. Co.* v. *Providence,* 262 U.S. 668, 67 L. Ed. 1167, 43 S. Ct. 684 (1923); *Bragg* v. *Weaver,* 251 U.S. 57, 64 L. Ed. 135, 40 S. Ct. 62 (1919).

The Supreme Court of Missouri, commenting upon the "legislative" means or restrictions, said (Appellants' Appendix A, pp. A27-28):

> "On pages 640 to 641, inclusive, of this opinion we related in detail the several sections of the Redevelopment Ordinance which impose the general conditions, restrictions and controls adopted by the city to assure accomplishment of the public purpose. It is doubtful whether the city could have prescribed more specific or definite restrictions in advance of each project.
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> * * *
>
> "* * * The means and method of restriction and assurance of accomplishment of the public purpose is for determination by the authorized legislative body, and that determination, whether wise or unwise, cannot be affected by the courts unless it appears upon allegation and clear proof that the legislative determination was arbitrary or was induced by fraud, collusion or bad faith. * * *"

It should be emphasized that appellants do not argue or contend that the equal protection clause requires the Missouri Urban Redevelopment Laws to impose conditions and restrictions beyond the clearance of blight and completion of the project, but rather they contend that there is no legislative machinery established to determine "* * * at the time of such abandonment (of the restrictions of Sub. Ord. 29352) that no further restrictions are deemed necessary in the public interest." (Appellants' Jurisdictional

Statement, p. 23) This issue is not a constitutional or judicial issue, but rather a question of legislative wisdom. This Court consistently has refused to review issues involving legislative discretion.

The "Questions Presented" are not substantial in that they present issues already specifically decided by the United States Supreme Court. In *Berman* v. *Parker, supra,* the Supreme Court examined the issue of whether urban redevelopment legislation served a public purpose so as to satisfy the constitutional requirements authorizing the taking of private property by eminent domain. The Court opined (348 U.S. at 32-33):

> "Public safety, public health, morality, peace and quiet, law and order—these are some of the more conspicuous examples of the traditional application of the police power to municipal affairs. Yet they merely illustrate the scope of the power and do not delimit it. See Noble State Bank v. Haskell, 219 U.S. 104, 111, 55 L. Ed. 112, 116, 31 S. Ct. 186, 32 LRANS 1062, Ann. Cas. 1912A 487. Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle. They may indeed make an almost insufferable burden. They may also be an ugly sore, a blight on the community which robs it of charm, which makes it a place from which men turn. The misery of housing may despoil a community as an open sewer may ruin a river.
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> "We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. * * *. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well

> as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

And, in determining whether a public use exists, this Court always has given great weight to the findings of the state legislature and state judiciary. For example, in *Milheim* v. *Moffat Tunnel Improvement District*, 262 U.S. 710, 67 L. Ed. 1194, 43 S. Ct. 694 (1923), the Court said (262 U.S. at 717):

> "Public purpose. The nature of a use, whether public or private, is ultimately a judicial question. However, the determination of this question is influenced by local conditions; and this court, while enforcing the 14th Amendment, should keep in view the diversity of such conditions and regard with great respect the judgments of state courts upon what should be deemed public uses in any state. Rindge Co. v. Los Angeles County, decided today, and cases therein cited. And like respect should be accorded to the declarations of the legislative body of the state. Fallbrook Irrig. Dist. v. Bradley, 164 U.S. 112, 160, 41 L. Ed. 369, 389, 17 Sup. Ct. Rep. 56. Here the legislature, familiar with the local conditions, has declared that the construction of the tunnel will benefit the people of the state; and both the local court of the state and its supreme court have held its construction to be for a public purpose."

The state supreme courts in forty-five states have sustained the constitutionality of urban redevelopment legislation under the various state constitutions and under the equal protection clause of the 14th Amendment to the

Constitution of the United States upon the ground that the clearance of blight and redevelopment of the blighted area serve a public purpose. 44 A.L.R.2d 1414; Comment, 49 Fordham L. Rev. 777 (1961). Appellants, by their own admissions, do not question the constitutional validity of those decisions.

Appellants assert that the "Questions Presented" are of "national importance" because of the universality among the states of urban redevelopment laws. (Appellants' Jurisdictional Statement, p. 22) Then, appellants promptly endeavor to negate their own argument by attempting to distinguish the admittedly constitutional urban redevelopment laws of forty-four other states and by classifying the Missouri Urban Redevelopment Laws as "unique" (Appellants' Jurisdictional Statement, p. 27). Appellants' categorization of the Missouri Urban Redevelopment Law as "unique" is based upon a complete and sweeping disregard of the fact that the Supreme Court of Missouri, *en banc,* held that the Missouri Urban Redevelopment Laws require that West Side, its successors and assigns, clear the blight and complete the redevelopment project and that the partial tax relief granted to the land continues only so long as the property is used subject to the conditions and restrictions of the development plan approved by Sub. Ord. 29352 (Appellants' Appendix A, p. A28). Such requirements are not "unique", but are consistent with the urban redevelopment legislation throughout the United States. The cases cited by appellants in their Jurisdictional Statement clearly support the constitutionality of the Missouri Urban Redevelopment Laws.

Finally, it is apparent that appellants, in stating the "Questions Presented" and the facts, pose hypothetical questions and blindly ignore the construction given by the Supreme Court of Missouri to *state* statutes enacted

pursuant to, and construed under, express provisions of the *state* constitution. The United States Supreme Court has consistently declared that it is bound by a state's interpretation of its own statutes. Typical of the expression of this rule is the following statement in *Aero Mayflower Transit Co.* v. *Board of Railroad Commissions of the State of Montana,* 332 U.S. 495, 92 L. Ed. 99, 68 S. Ct. 167 (1947) (332 U.S. at 499-500):

> "We put aside at the start appellant's suggestion that the Supreme Court of Montana has misconstrued the state statutes and therefore that we should consider them, for purposes of our limited function, according to appellant's view of their literal import. The rule is too well settled to permit of question that this Court not only accepts but is bound by the construction given to state statutes by the state courts. * * *"

More recently, Mr. Justice Brennan clearly stated the principle in the following language in the case of *Speiser* v. *Randall,* 357 U.S. 513, 2 L. Ed. 2d 1460, 78 S. Ct. 1332 (1958) (357 U.S. at 523):

> "* * * A more fundamental objection to the suggestion, of course, is that it does violence to the basic constitutional principle that the construction of state laws is the exclusive responsibility of the state courts."

The above argument summarizes the merits of appellees' position. However, each of the issues presented by appellants' four "Questions Presented" is examined in further detail with reference to the foregoing authorities.

1.

**Appellants' Question No. 1**

Appellants, by their Questions No. 1 and No. 1 A, seek a determination whether, by ignoring Sub. Ord. 29352, the development plan approved thereby and the other facts

involved in this controversy, the Missouri Urban Redevelopment Laws could be held to violate the equal protection clause of the 14th Amendment to the Constitution of the United States. The question is clearly hypothetical and seeks an advisory opinion in violation of the doctrine stated in *United States* v. *Raines, supra.*

Appellants' Question No. 1 B poses the issue of whether the construction by the Supreme Court of Missouri, under the Missouri Constitution of 1945 of statutes and ordinances is correct. Appellants represent to this Court, as a "fact" that Section 353.150 (4) of The Urban Redevelopment Corporations Law and Section 61.230 (c) of the Urban Redevelopment Ordinance "* * * permit a redevelopment corporation to acquire property by exercising the power of eminent domain and to sell said property immediately, free from all restrictions." (Appellants' Jurisdictional Statement, pp. 5-8) The Supreme Court of Missouri, interpreting the Missouri statutes involved under the Missouri Constitution, made a determination exactly contrary to appellants' statement of "fact". It said (Appellants' Appendix A, p. A26):

> "Sections 353.150, subd. 4 and 61.230 (c) do permit sale of real property acquired by the redevelopment corporation for a redevelopment project. But we must consider the whole of the Redevelopment Ordinance in determining whether safeguards or restrictions have been provided to assure that a public purpose will be served. In that connection we may consider the provisions of Sub. Ord. 29352. In subpoint A of their first point, appellants contend that Sub. Ord. 29352 may not supply the restrictions they say are necessary in the enabling laws to meet constitutional requirements. We do not disagree with the cases they cite on this proposition; they merely are not applicable here. *It is apparent that in considering the type of legislation necessary to effect the*

*purpose of Article VI, § 21, in a city the size of Kansas City where several redevelopment projects of varying sizes in different locations under varying conditions and having different utility purposes are contemplated, the city council, as the legislative body of the city, would adopt in the first instance an ordinance in general language establishing the policy and fixing general standards that would fit the overall purpose.* It would, and did, leave to subsequent ordinances the expression of the details and specific provisions, conditions and restrictions necessary to apply the policy and standards to a particular redevelopment project. The design of the Redevelopment Ordinance contemplates that supplemental action by ordinance would be necessary for each project to effect the overall purpose. For these reasons we may, and should consider the provisions of Sub. Ord. 29352.

"On pages 640 to 641, inclusive, of this opinion we related in detail the several sections of the Redevelopment Ordinance which impose the general conditions, restrictions and controls adopted by the city to assure accomplishment of the public purpose. It is doubtful whether the city could have prescribed more specific or definite restrictions in advance of each project." (Emphasis ours).

Thus, the issue raised was decided by the Supreme Court of Missouri under the Missouri Constitution on an adequate non-federal basis, *i.e.*, Article VI, Section 21, of the Missouri Constitution. In *Jankovich* v. *Indiana Toll Road Comm.*, 379 U.S. 487, 13 L. Ed. 2d 439, 85 S. Ct. 493 (1965), this Court said (l.c. 379 U.S. at 491-492):

"In such circumstances, even though a state court's opinion relies on similar provisions in both the State and Federal constitutions, the state constitutional provision has been held to provide an independent and adequate ground of decision depriving this Court of jurisdiction to review the state judgment. New York

City v. Central Savings Bank, 306 U.S. 661, 83 L. Ed. 1058, 59 S. Ct. 790, explained in Minnesota v. National Tea Co., 309 U.S. 551, 556-557, 84 L. Ed. 920, 923, 60 S. Ct. 676; Lynch v. New York ex rel. Pierson, 293 U.S. 52, 79 L. Ed. 191, 55 S. Ct. 16. * * *"

The Supreme Court of Missouri has determined that Sub. Ord. 29352 "* * * requires that West Side, its successors and assigns, complete clearance of blight from the area and construction of the improvements." (p. A28, Appellants' Appendix A), and held that, under both the Missouri Constitution and laws, the public purpose necessarily must be served, the means and methods and assurance of accomplishment with respect to each individual project being matters for determination by the authorized legislative body.

2.

**Appellants' Question No. 2**

The second question certified by appellants clearly demonstrates the hypothetical nature of Question No. 1, in that it assumes that the Missouri Urban Redevelopment Laws and Sub. Ord. 29352 require the elimination of blight and completion of the redevelopment project, but questions the constitutionality of said Missouri Urban Redevelopment Laws in that they do not provide for a mechanism or procedure to determine whether or not an abandonment of restrictions, after the public purpose has been accomplished, is in the public interest. The nature of the question itself concedes that restrictions need not, by constitutional necessity, continue after completion of the redevelopment. The substance of this question relates solely to the proper time for, or mechanics of, a legislative determination, *i.e.*, whether the determination as to the necessity, extent and nature of continuing restric-

tions after completion of the project, the legislative bodies of the State of Missouri and the City of Kansas City, Missouri, should establish a procedure whereby such determination could be made only after the clearance of the blight and completion of the project.

*A fortiori*, the arguments stated in response to Question No. 1 apply to Question No. 2. In addition, the Supreme Court of Missouri has determined that, under the Constitution of Missouri, Article VI, Section 21, after the clearance of blight no further restrictions are required. The Court said (Appellants' Appendix A, pp. A17, A25-26):

> "'The very fact that Article VI, § 21, is silent as to the use to which the land may be put after it is cleared of its blighted and insanitary condition and sold, "'*subject to such restrictions as may be deemed in the public interest.*'" (Emphasis ours), conveys, we think, the definite assumption that the primary object and public purpose of the law shall be the clearance and correction of any duly declared blighted and insanitary condition, and that thereafter the area may be sold with or without restrictions to a private enterprise, as may be deemed by Authority to be in the public interest.
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> • • •
>
> "What restrictions are required by Article VI, § 21, to be imposed when property taken is sold? And who may impose such restrictions? That section provides that property acquired by eminent domain for the above purposes may be sold '*subject to such restrictions as may be deemed in the public interest.*' (Emphasis supplied.) The mandate of the constitution is not that restrictions be imposed; the mandate is that either of the legislative bodies mentioned impose *such* restrictions as that body *may* deem in the public interest. That is: the legislative branch may deem it in the public interest and the property be sold subject to no restrictions. In the Kansas City Land Clear-

> ance case, supra, we also said at l.c. 51, that after the public purpose is served '* * * the area may be sold with or without restrictions to a private enterprise, as may be deemed by Authority to be in the public interest', and at l.c. 57 that '* * * if the Authority deems it in the public interest, such property may be sold without restriction.' In that case the body empowered to determine whether the public interest required that restrictions be imposed and, if so, what restrictions, was the Authority, as a public body, corporate and politic; in this case the body empowered to make that determination is the city through its legislative body, the city council."

As in the case of appellants' Question No. 1, the judgment of the Supreme Court of Missouri rests on a non-federal basis.

3.

**Appellants' Question No. 3**

Question No. 3 is presented by appellants on the premise that the Urban Redevelopment Ordinance and Sub. Ord. 29352 are contrary to the provisions of The Urban Redevelopment Corporations Law in that they automatically grant tax relief to any purchaser of the redevelopment property. Again, appellants mislead this Court by stating as a "fact" that The Urban Redevelopment Ordinance and Sub. Ord. 29352 are "* * * contrary to the express provision of Section 353.110 * * * limiting the granting of tax relief to an urban redevelopment corporation * * *" (Jurisdictional Statement, p. 13). The Supreme Court of Missouri, *en banc*, expressly interpreted said Section 353.110 and held that The Urban Redevelopment Ordinance and Sub. Ord. 29352 are consistent with and clearly authorized by said Section 353.110 and by Article X, Section 7, of the Constitution of Missouri, and

that Section 353.110 does not limit tax relief to urban redevelopment corporations. The Court said (Appellants' Appendix A, pp. A32-34):

> "* * * They also say that in automatically granting tax relief to *any* purchaser, this ordinance attempts to bind a future council and relieve it of its discretion to refuse tax relief to a purchaser from West Side. The ordinance *does* provide that the tax relief granted real property of West Side under the Redevelopment Law and Ordinance shall inure to a purchaser, meaning *any* purchaser. But that is not to say that the granting of such relief is in violation of the constitutional provisions referred to. *Appellants contend that § 353.110 limits tax relief solely to urban redevelopment corporations. However, on this point, they ignore § 353.150, subd. 4. Section 353.110 provides for partial relief from taxation* of the real property of an urban redevelopment corporation 'so long as [it] is owned by an urban redevelopment corporation and used in accordance with an authorized development plan * * *.' *The Redevelopment Law, in § 353.150, subd. 4, recognizes and contemplates that property of a redevelopment corporation may be sold, and that the purchaser may be one other than a redevelopment corporation. That section authorizes partial tax relief on the land acquired by such purchaser under certain circumstances;* it provides that if '* * * the purchaser of such real property of such redevelopment corporation shall continue to use, operate and maintain such real property in accordance with the provisions of any development plan, the legislative authority of any city affected by the provisions of this chapter may grant the partial tax relief provided in section 353.110; * * *.' *By § 353.150, subd. 4, the legislature has provided that partial tax relief may inure to a person other than an urban redevelopment corporation, and the public purpose of the law is encouraged by further providing that this relief may continue only so long as the property is used in ac-*

> *cordance with the development plan.* Article X, § 7, of the constitution expressly authorizes the general assembly to provide for partial relief from taxation of lands devoted to the purpose of rehabilitation of blighted areas by such method and upon such terms and conditions as it may prescribe. That section provides partial tax relief for the lands as distinguished from relief to a particular owner of the land; it does not prescribe the class of persons owning the land to whom the relief may inure. * * *" (Emphasis ours).

Obviously, Question No. 3 merely requests review by the United States Supreme Court of the interpretation given by the Supreme Court of Missouri of a statute of its own state. The question has also been certified upon the basis of an interpretation of The Urban Redevelopment Corporations Law urged by appellants that was specifically rejected by the Supreme Court of Missouri. Any review of this question would be contrary to the principles stated in *Aero Mayflower Transit Co.* v. *Board of Railroad Commissions of the State of Montana, supra,* and *Speiser* v. *Randall, supra.*

In addition, the Supreme Court of Missouri, *en banc,* in deciding the issue raised by appellants' Question No. 3, relied upon the Constitution of Missouri, and not the equal protection clause of the 14th Amendment to the Constitution of the United States. The Court said (Appellants' Appendix A, pp. A 33-34):

> "* * * Article X, § 7, of the constitution expressly authorizes the general assembly to provide for partial relief from taxation of lands devoted to the purpose of rehabilitation of blighted areas by such method and upon such terms and conditions as it may prescribe. *That section provides partial tax relief for the lands as distinguished from relief to a particular owner of the land;* it does not prescribe the class of persons

> owning the land to whom the relief may inure. That section empowers the general assembly to prescribe the method, terms and conditions under which that relief may be enjoyed, which includes the power to provide that partial tax relief shall inure to the benefit of a private urban redevelopment corporation *and* any purchaser from it, so long as that purchaser continues to use the land for what has been determined to be a public purpose. In Land Clearance for Redevelopment Authority of City of St. Louis v. City of St. Louis, supra, 270 S.W.2d l.c. 64-65, the constitutionality of § 353.110 was challenged as granting a tax exemption to a private urban redevelopment corporation. We held that the provisions of § 353.110 were expressly authorized by Article X, § 7, and did not conflict with Article X, § 6." (Emphasis ours).

Thus, the Supreme Court of Missouri has interpreted the Constitution of Missouri to mean that the partial tax relief is granted to and inures to the benefit of the "lands", and is not granted "to any purchaser" or any other particular owner. Appellants seek to obtain a reversal by this Court of an interpretation by the Supreme Court of Missouri of the Missouri Constitution. Jurisdiction does not rest with the United States Supreme Court to either revise the state court's interpretation of a statute of its own state or to review a decision based upon the adequate non-federal basis of the state's own constitution. *Jankovich* v. *Indiana Toll Road Comm., supra; Aero Mayflower Transit Co.* v. *Board of Railroad Commissioners of the State of Montana, supra; Speiser* v. *Randall, supra.*

4.

**Appellants' Question No. 4**

Appellants seek by Question No. 4 to obtain a determination whether Paragraph 23 of the Second Supplemental Contract, which is a part of Sub. Ord. 29352, is

sufficient to limit the earnings, particularly those of a lessee from West Side, to 8% of the cost of the project. Appellants assert West Side may be dissolved or assign its interest and that the provisions of Paragraph 23 of the Second Supplemental Contract could not be enforced against the lessee of the project by a "successor or assign" of West Side and the lessee thereby will be permitted to avoid the limitation upon its earnings. This fallacious and contrived argument is not based upon any violation of the Constitution of the United States, but is simply frivolous, ignores the intent and express provisions of said paragraph 23 (including the provision that Kansas City, Missouri, shall have the right to enforce the payment of excess net earnings by the lessee) and is made to obtain an interpretation in this Court of the Second Supplemental Contract. Appellants raise the issue of the novel interpretation and application of Paragraph 23 and the Second Supplemental Contract for the first time in this Court.

In an endeavor to find some basis upon which to inject this hypothetical question, appellants, in the Jurisdictional Statement (p. A36), rely on a quotation from the opinion of the Supreme Court of Missouri at page A36 of Appellants' Appendix A, holding that the fact that partial *tax relief* indirectly may inure to a lessee does not violate the Constitution. This does not decide, or even have any reference whatever to, the hypothetical issue now urged by appellants for the first time of whether Paragraph 23 of the Second Supplemental Contract inures to the benefit of a "successor and assign" of West Side, and that the omission of the term "successor and assign" in that paragraph opens an avenue for evasion of the net earnings limitation. The Supreme Court of Missouri, however, did hold that sufficient restrictions and conditions

to avoid unlawful evasion were contained in Sub. Ord. 29352. The Court said (Appellants' Appendix A, pp. A28-29):

> "* * * This ordinance requires that the 8% earnings restriction be applicable to both West Side and its lessee. It also requires that West Side, its successors and assigns, complete clearance of blight from the area and construction of the improvements. The city council has thus, by legislative determination, adopted this *means* of restricting the earnings of West Side and its lessee, and assuring accomplishment of the primary object and public purpose of the law. * * *
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> "* * * Sub. Ord. 29352 does not permit evasion of the earnings restriction but on the contrary endeavors to assure, and we think assures as far as possible, that the restriction will not be evaded by providing that the management operator shall not be paid in excess of the normal fee charged in the hotel industry."

The question of whether Paragraph 23 of the Supplemental Contract can be enforced against the lessee of the project by West Side's successors and assigns is obviously a question of interpretation of a state statute and the judgment of the state court must be followed. *Speiser* v. *Randall, supra.*

## CONCLUSION

We respectfully submit, therefore, that appellants present no substantial question for the decision of this Court, and that the judgment of the Supreme Court of Missouri rests on an adequate non-federal basis. Therefore, appellees' motion to dismiss or affirm should be granted.

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